

COASTAL CONSERVANCY

Staff Recommendation

February 4, 2010

**ELKHORN SLOUGH EASEMENT ACCEPTANCE
AND DOCUMENTATION PROGRAM**

File No. 09-028-01

Project Manager: Janet Diehl

RECOMMENDED ACTION: Authorization to disburse up to \$75,000 to the Elkhorn Slough Foundation to develop and implement a systematic program for establishing the boundaries and the baseline conditions for 10 conservation easements in the Elkhorn Slough watershed secured through acceptance of Offers to Dedicate (OTDs), and for monitoring and managing all of the Foundation's conservation easements.

LOCATION: Elkhorn Slough watershed, Monterey County (Exhibit 1)

PROGRAM CATEGORY: Enhancement

EXHIBITS

Exhibit 1: [Project Location](#)

Exhibit 2: [Easement Locations](#)

Exhibit 3: [Site Photographs](#)

Exhibit 4: [Project Letters](#)

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31251 - 31270 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes disbursement of an amount not to exceed \$75,000 (seventy-five thousand dollars) to the Elkhorn Slough Foundation (ESF) to develop and implement a systematic program for establishing the baseline conditions, ecological history and boundaries of conservation easements secured by acceptance of Offers to Dedicate Conservation Easements (OTDs) that were required by coastal development permits, and for monitoring and managing all of the Foundation's conservation easements.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed authorization is consistent with the purposes and objectives of Chapter 6 of Division 21 of the Public Resources Code, regarding the enhancement of coastal resources.
 2. The proposed project is consistent with the Project Selection Criteria and Guidelines, last updated by the Conservancy on June 4, 2009.
 3. ESF is a private nonprofit organization existing under Section 501(c)(3) of the U.S. Internal Revenue Code with purposes consistent with Division 21 of the Public Resources Code.”
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PROJECT SUMMARY:

This grant will enable the Elkhorn Slough Foundation (ESF) to develop and implement a systematic program for establishing the baseline conditions, ecological history and boundaries of 10 conservation easements secured by acceptance of Offers to Dedicate Conservation Easements (OTDs) that were recorded decades ago. The grant also will support monitoring and management of all conservation easements held by the Foundation. When the project is complete, ESF will be in a good position to accept additional OTDs that are set to expire this year.

ESF recently agreed to a request from Coastal Commission staff to accept nine OTDs that were about to expire, with the understanding that a system to develop accurate property surveys and baseline documentation would have to be developed. A tenth easement was accepted by the Coastal Conservancy but will soon be transferred to the Elkhorn Slough National Estuarine Research Reserve (ESNERR), which will manage the easement with assistance from ESF.

The boundaries of the 10 easements need to be clarified and identified on the ground in order for the conservation values of these easements to be realized. Many of the easement documents refer to wetland features that existed two decades ago. ESF will map the boundaries of the easements using tools that they have developed in conjunction with ESNERR for researching the ecological history of the watershed. ESF has in-house GIS capabilities to permit this work to be done efficiently.

Another important aspect of the project will be outreach to the current owners of the properties. Some of the properties have changed hands since the OTDs were recorded. The current landowners will be educated about the natural resources on their land and their responsibility under the terms of the easements.

The proposed grant will allow ESF to accomplish the following tasks in the next 12 months:

- Compile historic aerial photos of each easement
- Reconstruct the ecological history of each easement
- Review title documents for each parcel
- Clarify the easement boundaries
- Identify any encroachments and easement violations
- Create GIS maps of each easement
- Establish dialogue with landowners and share baseline and monitoring reports

- Document current conditions on each property
- Establish a sound, defensible baseline
- Develop monitoring protocols and schedule
- Conduct the first systematic annual monitoring of the easements
- Document and share the new easement management system with other easement-holders, including ESNERR.

Site Description: The 10 conservation easements are located on private properties throughout the Elkhorn Slough watershed, as depicted in Exhibit 2. They protect strategic drainages leading to the slough, and encompass a variety of habitats including fresh and tidal wetlands, riparian corridors, coastal prairie and oak woodlands. The photographs in Exhibit 3 depict some of the easements.

The easements augment the existing network of conserved lands in the watershed. Agencies and nonprofit organizations that hold property interests in Elkhorn Slough include: the ESNERR, the California Department of Fish and Game, the Monterey County Parks Department, the North Monterey County Parks and Recreation District, the California Department of Parks and Recreation, The Nature Conservancy and ESF.

At the center of the Monterey Bay coastline, Elkhorn Slough harbors the largest tract of tidal salt marsh in California outside of San Francisco Bay. It provides habitat for hundreds of species of plants and animals, including more than 340 species of birds. The surrounding landscape of working farms and undeveloped hills covered with rare maritime chaparral and coast live oak woodlands are highly scenic and remarkably intact, given the proximity to the San Francisco Bay Area.

Project History: In recent years, Coastal Commission staff approached ESF and ESNERR with 10 OTDs that were set to expire. These OTDs had been recorded 20 years ago, in compliance with conditions of coastal development permits that authorized development in the Elkhorn Slough area of the coastal zone. OTDs typically expire after 21 years if no qualifying entity agrees to accept, hold, monitor and manage the easements.

ESF accepted eight of the easements and is working on the ninth, and ESNERR will soon accept the tenth. ESF will work on all 10 easements under the proposed grant, in cooperation with ESNERR staff.

ESF and ESNERR agreed to accept these easements to prevent losing their conservation values, with the understanding that they would have to retroactively document baselines and create a systematic program for management, monitoring and defense. In the two decades since the terms of the OTDs were crafted, the conservation community has made tremendous progress in understanding and defining sound easements and setting new standards for creating baseline documentation, monitoring protocols, landowner contact and relations and general management.

Elkhorn Slough has long been of interest to the Coastal Conservancy. The Conservancy has funded several major planning, restoration and acquisition projects throughout the Elkhorn Slough watershed.

PROJECT FINANCING:

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| Coastal Conservancy | \$75,000 |
| Total project costs | <u>\$75,000</u> |

The source of funds for this project is expected to be the California Beach and Coastal Enhancement Account in the Environmental License Plate Fund (ELPF). The ELPF consists of payments made by the public for purchase of “whale tail” license plates. These funds are appropriated to the Conservancy annually for use in enhancing and restoring coastal natural resources and for other projects consistent with Division 21 of the Public Resources Code. This project would provide for the enhancement of wetlands and associated habitat in the Elkhorn Slough watershed through monitoring and management of conservation easements, consistent with the ELPF.

Matching services valued at \$10,000 will be provided by staff at the Elkhorn Slough Foundation and the National Estuarine Research Reserve.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

Pursuant to Section 31251, the Conservancy may award grants to nonprofit organizations for the purpose of enhancement of coastal resources that, because of incompatible land uses have suffered loss of natural and scenic values. The grants must be used for corrective measures that will enhance the natural and scenic character of the areas. The easements are on lands that have coastal resources but that are impacted by nearby development, i.e., the easements mitigate for the impacts of coastal development. Since the easement areas have not been monitored or managed for 20 years, it is likely that the resources of the easement areas have suffered loss of natural values. The resources will be enhanced by the proposed activities of the Elkhorn Slough Foundation. In order to protect in perpetuity the natural resources within these conservation easements, it is necessary to clarify the boundaries of the easements, create a baseline of the features to be preserved, and monitor and manage the easements. Thus, this grant will be used to enhance the natural character of the easement areas and the Elkhorn Slough.

Pursuant to Section 31252, the area proposed for resource enhancement has been identified in the Monterey County Local Coastal Program as requiring public action to resolve existing or potential resource protection problems. The proposed project is consistent with the LCP (see “LCP Consistency” section, below).

Pursuant to Section 31253, the Conservancy may provide up to the total of the cost of any coastal resource enhancement project. The amount of funding provided by the Conservancy has been determined by the total amount of funding available for coastal resource enhancement projects, the fiscal resources of the applicant, and the urgency of the project relative to other eligible coastal resource enhancement projects.

CONSISTENCY WITH CONSERVANCY'S 2007 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 2, Objective D** of the Conservancy's 2007 Strategic Plan, the proposed project will enable ESF to accept more OTDs in the future by supporting the development of a program to monitor and manage the OTDs already accepted.

Consistent with **Goal 4, Objective A** of the Conservancy's 2007 Strategic Plan, the proposed project will protect 10 significant coastal and watershed resource properties totaling over 50 acres by enabling ESF to produce baseline documentation that will enable it to preserve the easements in perpetuity. In addition, this effort will improve the management of existing easements that, with the OTDs, encompass 861 acres in the watershed.

Consistent with **Goal 6, Objective F** of the Conservancy's 2007 Strategic Plan, the proposed project will improve water quality to benefit coastal resources by preserving the natural resources of the easement-protected properties bordering Elkhorn Slough.

Consistent with **Goal 7, Objective C** of the Conservancy's 2007 Strategic Plan, the proposed project involves the acquisition of conservation easements that permanently preserve buffer strips along sensitive habitat and watercourses.

Consistent with **Goal 8, Objective A** of the Conservancy's 2007 Strategic Plan, the proposed project will resolve potential land-use conflicts stemming from OTDs imposed by the Coastal Commission by enabling ESF to clarify the terms of the easements and develop a program to encourage landowner compliance with the easements.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on June 4, 2009 in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.

3. **Support of the public:** There is strong public support for conservation and stewardship in Elkhorn Slough, as evidenced by ESF's active volunteer program. The key locations of the easements in question and the valuable natural resources they protect have generated community interest and support (Exhibit 4, Letters).
4. **Location:** The easements are located within the coastal zone of Monterey County in the Elkhorn Slough watershed.
5. **Need:** The fate of the easements secured by OTDs rests with this proposed work. Without a sound and systematic approach to defining, communicating, managing, monitoring and defending these easements, their value will be lost. In addition to the value of securing the OTDs, the development of a strong easement program in the Elkhorn Slough watershed will benefit the management of other easements held by ESF, as well as easements that the foundation will accept in the future. No other source of funding is available for this project.
6. **Greater-than-local interest:** Elkhorn Slough, in the central Monterey Bay Area, is a nationally recognized estuary supporting striking biological diversity. The slough has been identified as a Globally Important Bird Area by the National Audubon Society and the American Birding Conservancy. The tidal waters of the slough are part of the Monterey Bay National Marine Sanctuary, and the National Estuarine Research Reserve is located along the shore. The slough hosts Moss Landing State Park, and is also a Western Hemisphere Shorebird Reserve. Monitoring and managing these easements will add to the conservation of natural resources of national significance. The slough also is an important economic generator for the community, as a focal point for tourism, education and research.
7. **Sea level rise vulnerability:** The properties preserved by these easements will not be developed, and no improvements will be at risk to sea level rise. ESF will consider sea level rise when setting management goals for the easements.

Additional Criteria:

8. **Urgency:** ESF has accepted a number of the expiring OTDs and must quickly establish the baseline documentation and begin communicating with the landowners to undertake annual monitoring. Several more OTDs are outstanding and set to expire soon. ESF must set up a system to manage and monitor the existing easements before it can assume responsibility for additional easements.
9. **Resolution of more than one issue:** The project will resolve the immediate need to secure the OTDs that are about to expire while strengthening the management of other easements in the watershed.
10. **Leverage:** Funds provided by the Conservancy will be leveraged by in-kind services provided by staff of ESF and ESNERR. These services, valued at approximately \$10,000, include aerial photography, computer mapping lab and plotter use, ground transportation expenses and staff time.
12. **Readiness:** ESF has staff with extensive experience and knowledge of the slough, and has in-house GIS capabilities to permit this work to be done efficiently. ESF staff is prepared to implement the project immediately.

13. **Realization of prior Conservancy goals:** This project is a continuation of Conservancy efforts to promote conservation on the coast by identifying public agencies and nonprofit organizations appropriate to accept ownership and maintenance responsibility for easements created through the acceptance of coastal development permit OTDs. The Conservancy has supported conservation projects at Elkhorn Slough for decades.
15. **Cooperation:** The Elkhorn Slough Foundation collaborates closely with the Elkhorn Slough National Estuarine Research Reserve. ESF and ESNERR jointly employ 40 people focused on the research, education, outreach, stewardship and management of the slough. Both entities have assumed responsibility for OTDs and the proposed project will support both efforts. In addition, ESF works with The Nature Conservancy and the Monterey Agricultural Conservancy – the two other entities holding easements in the Elkhorn Slough watershed. This work will inform and support the development of systems to track, monitor and manage all slough easements.
17. **Minimization of Greenhouse Gas Emissions:** Management of these easements by a local nonprofit organization – rather than by Coastal Conservancy staff in Oakland – minimizes greenhouse gas emissions by requiring relatively short drives for property inspection. Additionally, these easements help ensure the preservation of wetlands, which aid in carbon sequestration.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The proposed project is consistent with the following recommended actions or specific policies of the certified North Monterey County Local Coastal Program:

Section 2.3.2 states “land use adjacent to locations of environmentally sensitive habitat shall be compatible with the long-term maintenance of the resource.”

Section 2.3.3.B.5 states “ all wetland areas of the north County Coastal Zone shall be protected and preserved for their plant and wildlife values, including but not limited to McClusky Slough, . . . Elkhorn Slough, . . . and Moro Cojo Slough.”

Section 2.3.4.2 states that a comprehensive wetland management plan should be completed for . . . Elkhorn Slough. . . . All appropriate public agencies including . . . the Coastal Conservancy . . . should participate in the management plan financing and development.”

Section 2.3.4.5 states “the County shall encourage the restoration of sensitive plant habitats on public and private lands.”

The proposed project meets the goals of these LCP policies by carrying out one or more of the recommendations of The Elkhorn Slough Watershed Conservation Plans of 1989 and 1999, and the Moro Cojo Wetlands Management and Enhancement plan, 1996, all of which call for the permanent protection of wetlands and uplands surrounding developed land. The easements are within the area covered by the plans.

The proposed project involves easements that were created by conditions of coastal development permits issued by the Coastal Commission or the County of Monterey. In each case, the Coastal Commission or County determined that it could not approve development consistent with the policies of the Coastal Act except on the condition that these easements be created to preserve

portions of the properties in perpetuity. The goal of this project is to enhance the resource value of these easements, as well as the nearby Elkhorn Slough, through adequate monitoring and management of the easements.

COMPLIANCE WITH CEQA:

The development and implementation of a baseline documentation and monitoring program for existing conservation easements, as described in this report is categorically exempt from review pursuant to the California Environmental Quality Act (“CEQA”) section 21084 and the CEQA Guidelines at 14 Cal. Code of Regulations, Section 15306, which exempts projects that consist of the collection of basic data, research, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

Staff will file a notice of exemption upon approval.